

112TH CONGRESS
2^D SESSION

H. R. 9

IN THE SENATE OF THE UNITED STATES

APRIL 23, 2012

Received; read twice and referred to the Committee on Finance

AN ACT

To amend the Internal Revenue Code of 1986 to provide a deduction for domestic business income of qualified small businesses.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Small Business Tax
3 Cut Act”.

4 **SEC. 2. DEDUCTION FOR DOMESTIC BUSINESS INCOME OF**
5 **QUALIFIED SMALL BUSINESSES.**

6 (a) **IN GENERAL.**—Part VI of subchapter B of chap-
7 ter 1 of the Internal Revenue Code of 1986 is amended
8 by adding at the end the following new section:

9 **“SEC. 200. DOMESTIC BUSINESS INCOME OF QUALIFIED**
10 **SMALL BUSINESSES.**

11 “(a) **ALLOWANCE OF DEDUCTION.**—In the case of a
12 qualified small business, there shall be allowed as a deduc-
13 tion an amount equal to 20 percent of the lesser of—

14 “(1) the qualified domestic business income of
15 the taxpayer for the taxable year, or

16 “(2) taxable income (determined without regard
17 to this section) for the taxable year.

18 “(b) **DEDUCTION LIMITED BASED ON WAGES**
19 **PAID.**—

20 “(1) **IN GENERAL.**—The amount of the deduc-
21 tion allowable under subsection (a) for any taxable
22 year shall not exceed 50 percent of the greater of—

23 “(A) the W-2 wages of the taxpayer paid
24 to non-owners, or

25 “(B) the sum of—

1 “(i) the W-2 wages of the taxpayer
2 paid to individuals who are non-owner fam-
3 ily members of direct owners, plus

4 “(ii) any W-2 wages of the taxpayer
5 paid to 10-percent-or-less direct owners.

6 “(2) DEFINITIONS RELATED TO OWNERSHIP.—

7 For purposes of this section—

8 “(A) NON-OWNER.—The term ‘non-owner’
9 means, with respect to any qualified small busi-
10 ness, any person who does not own (and is not
11 considered as owning within the meaning of
12 subsection (c) or (e)(3) of section 267, as the
13 case may be) any stock of such business (or, if
14 such business is other than a corporation, any
15 capital or profits interest of such business).

16 “(B) NON-OWNER FAMILY MEMBERS.—An
17 individual is a non-owner family member of a
18 direct owner if—

19 “(i) such individual is family (within
20 the meaning of section 267(c)(4)) of a di-
21 rect owner, and

22 “(ii) such individual would be a non-
23 owner if subsections (c) and (e)(3) of sec-
24 tion 267 were applied without regard to
25 section 267(c)(2).

1 “(C) DIRECT OWNER.—The term ‘direct
2 owner’ means, with respect to any qualified
3 small business, any person who owns (or is con-
4 sidered as owning under the applicable non-
5 family attribution rules) any stock of such busi-
6 ness (or, if such business is other than a cor-
7 poration, any capital or profits interest of such
8 business).

9 “(D) 10-PERCENT-OR-LESS DIRECT OWN-
10 ERS.—The term ‘10-percent-or-less direct
11 owner’ means, with respect to any qualified
12 small business, any direct owner of such busi-
13 ness who owns (or is considered as owning
14 under the applicable non-family attribution
15 rules)—

16 “(i) in the case of a qualified small
17 business which is a corporation, not more
18 than 10 percent of the outstanding stock
19 of the corporation or stock possessing more
20 than 10 percent of the total combined vot-
21 ing power of all stock of the corporation,
22 or

23 “(ii) in the case of a qualified small
24 business which is not a corporation, not

1 more than 10 percent of the capital or
2 profits interest of such business.

3 “(E) APPLICABLE NON-FAMILY ATTRIBU-
4 TION RULES.—The term ‘applicable non-family
5 attribution rules’ means the attribution rules of
6 subsection (c) or (e)(3) of section 267, as the
7 case may be, but in each case applied without
8 regard to section 267(c)(2).

9 “(3) W-2 WAGES.—For purposes of this sec-
10 tion—

11 “(A) IN GENERAL.—The term ‘W-2
12 wages’ means, with respect to any person for
13 any taxable year of such person, the sum of the
14 amounts described in paragraphs (3) and (8) of
15 section 6051(a) paid by such person with re-
16 spect to employment of employees by such per-
17 son during the calendar year ending during
18 such taxable year.

19 “(B) LIMITATION TO WAGES ATTRIB-
20 UTABLE TO QUALIFIED DOMESTIC BUSINESS IN-
21 COME.—Such term shall not include any
22 amount which is not properly allocable to do-
23 mestic business gross receipts for purposes of
24 subsection (c)(1).

1 “(C) OTHER REQUIREMENTS.—Except in
2 the case of amounts treated as W-2 wages
3 under paragraph (4)—

4 “(i) such term shall not include any
5 amount which is not allowed as a deduc-
6 tion under section 162 for the taxable
7 year, and

8 “(ii) such term shall not include any
9 amount which is not properly included in a
10 return filed with the Social Security Ad-
11 ministration on or before the 60th day
12 after the due date (including extensions)
13 for such return.

14 “(4) CERTAIN PARTNERSHIP DISTRIBUTIONS
15 TREATED AS W-2 WAGES.—

16 “(A) IN GENERAL.—In the case of a quali-
17 fied small business which is a partnership and
18 elects the application of this paragraph for the
19 taxable year—

20 “(i) the qualified domestic business
21 taxable income of such partnership for
22 such taxable year (determined after the ap-
23 plication of clause (ii)) which is allocable
24 under rules similar to the rules of section
25 199(d)(1)(A)(ii) to each qualified service-

1 providing partner shall be treated for pur-
2 poses of this section as W-2 wages paid
3 during such taxable year to such partner
4 as an employee, and

5 “(ii) the domestic business gross re-
6 ceipts of such partnership for such taxable
7 year shall be reduced by the amount so
8 treated.

9 “(B) QUALIFIED SERVICE-PROVIDING
10 PARTNER.—For purposes of this paragraph, the
11 term ‘qualified service-providing partner’
12 means, with respect to any qualified domestic
13 business taxable income, any partner who is a
14 10-percent-or-less direct owner and who materi-
15 ally participates in the trade or business to
16 which such income relates.

17 “(5) ACQUISITIONS AND DISPOSITIONS.—The
18 Secretary shall provide for the application of this
19 subsection in cases where the taxpayer acquires, or
20 disposes of, the major portion of a trade or business
21 or the major portion of a separate unit of a trade
22 or business during the taxable year.

23 “(c) QUALIFIED DOMESTIC BUSINESS INCOME.—For
24 purposes of this section—

1 “(1) IN GENERAL.—The term ‘qualified domes-
2 tic business income’ for any taxable year means an
3 amount equal to the excess (if any) of—

4 “(A) the taxpayer’s domestic business
5 gross receipts for such taxable year, over

6 “(B) the sum of—

7 “(i) the cost of goods sold that are al-
8 locable to such receipts, and

9 “(ii) other expenses, losses, or deduc-
10 tions (other than the deduction allowed
11 under this section), which are properly al-
12 locable to such receipts.

13 “(2) DOMESTIC BUSINESS GROSS RECEIPTS.—

14 “(A) IN GENERAL.—The term ‘domestic
15 business gross receipts’ means the gross re-
16 ceipts of the taxpayer which are effectively con-
17 nected with the conduct of a trade or business
18 within the United States within the meaning of
19 section 864(c) but determined—

20 “(i) without regard to paragraphs (3),
21 (4), and (5) thereof, and

22 “(ii) by substituting ‘qualified small
23 business (within the meaning of section
24 200)’ for ‘nonresident alien individual or a

1 foreign corporation' each place it appears
2 therein.

3 “(B) EXCEPTIONS.—For purposes of para-
4 graph (1), domestic business gross receipts
5 shall not include any of the following:

6 “(i) Gross receipts derived from the
7 sale or exchange of—

8 “(I) a capital asset, or

9 “(II) property used in the trade
10 or business (as defined in section
11 1231(b)).

12 “(ii) Royalties, rents, dividends, inter-
13 est, or annuities.

14 “(iii) Any amount which constitutes
15 wages (as defined in section 3401).

16 “(3) APPLICATION OF CERTAIN RULES.—Rules
17 similar to the rules of paragraphs (2) and (3) of sec-
18 tion 199(c) shall apply for purposes of this section
19 (applied with respect to qualified domestic business
20 income in lieu of qualified production activities in-
21 come and with respect to domestic business gross re-
22 ceipts in lieu of domestic production gross receipts).

23 “(d) QUALIFIED SMALL BUSINESS.—For purposes of
24 this section—

1 “(1) IN GENERAL.—The term ‘qualified small
2 business’ means any employer engaged in a trade or
3 business if such employer had fewer than 500 full-
4 time equivalent employees for either calendar year
5 2010 or 2011.

6 “(2) FULL-TIME EQUIVALENT EMPLOYEES.—
7 The term ‘full-time equivalent employees’ has the
8 meaning given such term by subsection (d)(2) of sec-
9 tion 45R applied—

10 “(A) without regard to subsection (d)(5) of
11 such section,

12 “(B) with regard to subsection (e)(1) of
13 such section, and

14 “(C) by substituting ‘calendar year’ for
15 ‘taxable year’ each place it appears therein.

16 “(3) EMPLOYERS NOT IN EXISTENCE PRIOR TO
17 2012.—In the case of an employer which was not in
18 existence on January 1, 2012, the determination
19 under paragraph (1) shall be made with respect to
20 calendar year 2012.

21 “(4) APPLICATION TO CALENDAR YEARS IN
22 WHICH EMPLOYER IN EXISTENCE FOR PORTION OF
23 CALENDAR YEAR.—In the case of any calendar year
24 during which the employer comes into existence, the
25 number of full-time equivalent employees determined

1 under paragraph (2) with respect to such calendar
2 year shall be increased by multiplying the number so
3 determined (without regard to this paragraph) by
4 the quotient obtained by dividing—

5 “(A) the number of days in such calendar
6 year, by

7 “(B) the number of days during such cal-
8 endar year which such employer is in existence.

9 “(5) SPECIAL RULES.—

10 “(A) AGGREGATION RULE.—For purposes
11 of paragraph (1), any person treated as a single
12 employer under subsection (a) or (b) of section
13 52 (applied without regard to section 1563(b))
14 or subsection (m) or (o) of section 414 shall be
15 treated as a single employer for purposes of this
16 subsection.

17 “(B) PREDECESSORS.—Any reference in
18 this subsection to an employer shall include a
19 reference to any predecessor of such employer.

20 “(e) SPECIAL RULES.—

21 “(1) ELECTIVE APPLICATION OF DEDUCTION.—

22 Except as otherwise provided by the Secretary, the
23 taxpayer may elect not to take any item of income
24 into account as domestic business gross receipts for
25 purposes of this section.

1 “(2) COORDINATION WITH SECTION 199.—If a
2 deduction is allowed under this section with respect
3 to any taxpayer for any taxable year—

4 “(A) any gross receipts of the taxpayer
5 which are taken into account under this section
6 for such taxable year shall not be taken into ac-
7 count under section 199 for such taxable year,
8 and

9 “(B) the W-2 wages of the taxpayer which
10 are taken into account under this section shall
11 not be taken into account under section 199 for
12 such taxable year.

13 “(3) APPLICATION OF CERTAIN RULES.—Rules
14 similar to the rules of paragraphs (1), (2), (3), (4),
15 (6), and (7) of section 199(d) shall apply for pur-
16 poses of this section (applied with respect to quali-
17 fied domestic business income in lieu of qualified
18 production activities income).

19 “(f) REGULATIONS.—The Secretary shall prescribe
20 such regulations as are necessary to carry out the pur-
21 poses of this section, including regulations which prevent
22 a taxpayer which reorganizes from being treated as a
23 qualified small business if such taxpayer would not have
24 been treated as a qualified small business prior to such
25 reorganization.

1 “(g) APPLICATION.—Subsection (a) shall apply only
2 with respect to the first taxable year of the taxpayer begin-
3 ning after December 31, 2011.”.

4 (b) CONFORMING AMENDMENTS.—

5 (1) Section 56(d)(1)(A) of such Code is amend-
6 ed by striking “deduction under section 199” both
7 places it appears and inserting “deductions under
8 sections 199 and 200”.

9 (2) Section 56(g)(4)(C) of such Code is amend-
10 ed by adding at the end the following new clause:

11 “(vii) DEDUCTION FOR DOMESTIC
12 BUSINESS INCOME OF QUALIFIED SMALL
13 BUSINESSES.—Clause (i) shall not apply to
14 any amount allowable as a deduction under
15 section 200.”.

16 (3) The following provisions of such Code are
17 each amended by inserting “200,” after “199,”.

18 (A) Section 86(b)(2)(A).

19 (B) Section 135(e)(4)(A).

20 (C) Section 137(b)(3)(A).

21 (D) Section 219(g)(3)(A)(ii).

22 (E) Section 221(b)(2)(C)(i).

23 (F) Section 222(b)(2)(C)(i).

24 (G) Section 246(b)(1).

25 (H) Section 469(i)(3)(F)(iii).

1 (4) Section 163(j)(6)(A)(i) of such Code is
2 amended by striking “and” at the end of subclause
3 (III) and by inserting after subclause (IV) the fol-
4 lowing new subclause:

5 “(V) any deduction allowable
6 under section 200, and”.

7 (5) Section 170(b)(2)(C) of such Code is
8 amended by striking “and” at the end of clause (iv),
9 by striking the period at the end of clause (v) and
10 inserting “, and”, and by inserting after clause (v)
11 the following new clause:

12 “(vi) section 200.”.

13 (6) Section 172(d) of such Code is amended by
14 adding at the end the following new paragraph:

15 “(8) DOMESTIC BUSINESS INCOME OF QUALI-
16 FIED SMALL BUSINESSES.—The deduction under
17 section 200 shall not be allowed.”.

18 (7) Section 613(a) of such Code is amended by
19 striking “deduction under section 199” and insert-
20 ing “deductions under sections 199 and 200”.

21 (8) Section 613A(d)(1) of such Code is amend-
22 ed by redesignating subparagraphs (C), (D), and
23 (E) as subparagraphs (D), (E), and (F), respec-
24 tively, and by inserting after subparagraph (B) the
25 following new subparagraph:

1 “(C) any deduction allowable under section
2 200,”.

3 (9) Section 1402(a) of such Code is amended
4 by striking “and” at the end of paragraph (16), by
5 redesignating paragraph (17) as paragraph (18),
6 and by inserting after paragraph (16) the following
7 new paragraph:

8 “(17) the deduction provided by section 200
9 shall not be allowed; and”.

10 (c) CLERICAL AMENDMENT.—The table of sections
11 for part VI of subchapter B of chapter 1 of such Code
12 is amended by adding at the end the following new item:

“Sec. 200. Domestic business income of qualified small businesses.”.

Passed the House of Representatives April 19, 2012.

Attest:

KAREN L. HAAS,

Clerk.